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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,360	03/19/2004	Roger Farnholtz	1001.1690102	9216
28075 7590 05/22/2009 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
EXAMINER				
BHATIA, AARTI				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
05/22/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/804,360

**Applicant(s)**

FARNHOLTZ, ROGER

**Examiner**

Aarti Bhatia

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-22, 24-26, 28-35, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-22, 24-26, 28-35, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the fifth Office Action based on the 10/804,360 application filed on 3/19/2004.

Claims 19-22, 24-26, 28-35, and 37-38, as amended on 2/10/2009, are currently pending and have been considered below.

### ***Response to Arguments***

1. The objection to the drawings has been withdrawn in view of the arguments made by the Applicant.
2. The rejection of claims 19-22, 24-26, 28-35 and 37-38 under 35 USC § 112 has been withdrawn in view of the arguments made by the Applicant.
3. Applicant's arguments filed 2/10/2009 with respect to the have been fully considered but they are not persuasive.
4. The Applicant argues that it would not be obvious to rearrange the orientation of the overlapping torque tube and braided member. The Examiner disagrees. Not only is it well within the level of ordinary skill to overlap tubes in various ways, it is also obvious to vary the size of tubular members to arrive at the desired diameter. The rejection over Lundquist is maintained and thereby made final.

### ***Response to Amendment***

#### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 19, 20, 21, 22, 24, 26, 28, 29, 30, 31, 32, 33, 35, 37, and 38 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No 5,228,441 to Lundquist.

Lundquist teaches the torqueable and deflectable medical device shaft as generally claimed (see previous office action) but fails to teach that the braided portion is disposed over the distal end of the tubular member.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the braid to overlie the tubular member, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Further, It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the diameter of the tubular members since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

7. Claims 25 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lundquist in view of U.S. Patent No. 5,437,288 to Schwartz.

Lundquist discloses the medical device of claims 19 and 28, and teaches that there can be variation in the number, frequency, and location of slits (column 4, lines 20-37) but fails to disclose wherein the depth of slits is greater near the distal end/junction of the proximal shaft section than near the proximal end/junction of the proximal shaft section.

Schwartz teaches a flexible catheter (figure 2), where the depth of slits (14) becomes greater when moving from the proximal end (11) to the distal end (12) (column 4, lines 5-8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flexible catheter of Lundquist with the variable depth slits of Schwartz because by increasing the depth of the grooves, the flexibility of the flexible portion nearest the distal end is increased (column 4, lines 8-11).

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aarti Bhatia whose telephone number is (571) 270-5033. The examiner can normally be reached on Monday-Thursday 8:00am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call (800) 786-9199 (IN USA OR CANADA) or (571) 272-1000.

/Aarti Bhatia/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763